

IN THE HIGH COURT OF KARNATAKA AT BANGALORE.

Dated the 28th day of May 1998.

BEFORE

THE HON'BLE MR. JUSTICE HARINATH TILAHARI.

CIVIL REVISION PETITION NO. 1510/1993.

BETWEEN:

1) Bellappa,
S/O late Thotisadappa
since deceased.

1(a) Smt. Chowdamma,
Aged 65 years.
W/O late Bellappa.

1(b) Smt. Sarasamma,
Aged about 25 years,
W/O late Jayappa
D/O late Bellappa.

Both are residing at Kesaranaahalli,
Robertsonpet, Hobli, Bangarapet,
Kolar Dist.

2) Muneppa,
S/o late Sadappa,
Aged 76 years
Since deceased.

2(a) Smt. Muniyamma, Aged
about 60 years. W/O
late Muniappa.

2(b) Sri. MuniVenkatappa,
aged about 45 years, S/O
late Muneppa.

2(c) Sri. Narayanaswamy,
Aged about 33 years,
S/O late Muneppa.

2(d) Sri. Sadappa, Aged about
30 years, S/O late
Muneppa.

2(a) to 2(d) are residing at
Kesaranaahalli, Robertsonpet
Hobli, Bangarapet Taluk,
Kolar District.

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- 3) Muniswamy,
S/o late Sadappa,
Aged about 69 years.

Petitioners-1 to 3 are
the residents of Kesaranahalli,
Robertsonpet, Hobli,
Bangarpet Taluk, Kolar
District.

PETITIONERS.

(By Sri.B.K. Chandrasekar for petitioners)

AND:

- 1) State of Karnataka,
Represented by its
Secretary, Department
of Revenue, Multistoreied
Building, Ambedkar Road,
Bangalore-560 001.
- 2) The Tahsildar,
Bangarpet Taluk,
Bangarpet, Kolar District.
- 3) Annaiah,
S/O late Police Muniga,
Aged about 54 years,
R/O Ithandahalli,
Kasaba Hobli,
Bangarpet Taluk.

RESPONDENTS.

(By Sri.C. Ramakrishna, Government Pleader,
for Rs.1 and 2)

(By Sri. J.G. Chandramohan for Rs.3)

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This Civil Revision Petition is filed under
Section 115 of C.P.C. against the order dated 1-4-1992
passed in MA.No. 82/88 on the file of the Additional
Dist.and Sessions Judge, Kolar, dismissing the appeal
and confirming the order dated 5-10-1987 passed in
Case No. 252/78-89 on the file of the Tahsildar,
Bangarpet etc.,

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3. The claimant being the great grand son (being the daughter's grand son) claim^{ed} himself to be entitled to hold the village office, in every case along with great grand son^(Sons Grand Son) of Lachumoga namely respondent No.3.

4. The learned Counsel for the appellants/applicant contended before me that the District Judge, erred in law in not recognizing the claimant to be the valid holder of Village Office. Learned counsel contended that under Hindu Law of 1956 (Hindu Succession Act) daughter and son succeed their father equally. Therefore, it should be taken that the petitioner-applicants being, the Heir of the daughter has been entitled to succeed to the village office along with sons' grand sons and in not giving effect to this aspect and in not considering the position in the light of the law i.e., Hindu Succession Act 1956 as such the Tahsildar and the District Judge committed an error of law and acted illegally. He submitted that in this view of the matter, the appellate court has committed an error of law and illegality, ^{it is so held} the revision may be allowed.

5. On behalf of the 3rd respondent Sri.Chandra Mohan hotly contested the above contentions of learned counsel for the applicant and urged that

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The two authorities including the District Judge passed the order according to law. Sri. Chandra Mohan contended that jurisdiction under Section 115 is limited and confined to question of jurisdiction as defined in Section 115 itself, viz., exercise of jurisdiction not vested. Failure to exercise jurisdiction vested in the case where the Court below ~~is~~ the subordinate Court acts illegally or with material irregularity. Sri. Chandra Mohan further submitted that no such case has been made out for exercise of jurisdiction under Section 115 CPC. Learned counsel further contended that error of fact and error of law cannot be interfered with and it should not be interfered with under Section 115 CPC because it does not amount to error of jurisdiction. The Court having jurisdiction may decide rightly or wrongly ~~or~~ erroneously ^{but if} that will not be make a ~~case~~ ^{for} exercise of revisional jurisdiction ^{as} it cannot be said that the Court had committed a jurisdictional error or acted illegally. Sri. Chandra Mohan further submitted that even otherwise also the order does not suffer from any error of law. He submitted that in order to make a claim the claimant must make out the case. The revisionist applicant

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had to first allege and prove and establish that the original holder of the Village Office Lachumoga died after the enforcement of the Hindu Succession Act, Before pressing the argument that daughter and son succeeded simultaneously to the property even for a moment it ~~would~~th be taken that village office is a property. He submitted that one of the applicants himself at the time of filing of the revision in 27-7-1992 was 79 years old. The revisionist applicant was 69 years old. The daughter of Lachumoga as according to the claimant's case has been their grand mother. It means Lachumoga was his great grand father. It is hardly possible to consider that the father of the grand mother would have been alive in or after 1956. The burden, to allege and prove that Lachumoga died on or after the date of coming into force of Hindu Succession Act 1956 i.e., after 1956 and the grand mother Hanumakka succeed or inherited the said office along with Ramappa son of Lachumoga, did lay on the revisionist applicants. They have neither alleged nor proved that succession from Lachumoga opened after 1956, and that Lachumoga died after coming into force of Hindu Succession Act . This being the position, their claim now made in the course of arguments cannot not succeed

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as under Hindu Law (old) as well prior to Act of 1956, the son used to succeed their father. The ^{respondents'} learned counsel contended that daughter could be a heir only, if there was no son alive to person dying intestate. They could not succeed or inherit simultaneously i.e., along with the son even under the provisions of the Hindu Womens Rights to Property Act. In this view of the matter, ^{the respondents' counsel is of the view that} the District Judge did not commit any error in dismissing the revisionist appeal and affirming the order of the Tahsildar.

6. I have applied my mind to the contentions made by the learned counsels for the parties. It is to be taken note of that jurisdiction of this Court under Section 115 CPC is circumscribed ~~under~~ by certain conditions and is exercisable only on the fulfilment of those conditions as prescribed under Section 115 and not otherwise. A reading of Section 115 of the C.P.C. will reveal by itself that in order to initiate proceedings under Section 115 or to seek relief under Section 115 the claimant has to establish (a) that the order is one passed by the subordinate Civil Courts and it amounts to a case decided (b) that no appeal lies to this court from that order (c) that the order passed by the Subordinate Court

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suffers from jurisdictional error viz., illegal usurption of jurisdiction ^{refusal to} exercise of jurisdiction vested or in cases whether the Court below is shown to have acted illegally and with material irregularity in exercise of jurisdiction. The 4th condition is that the order impugned in such cases if is allowed to stand injustice or irreparable injury is likely to be caused to the party affected. Learned counsel for the applicant on being especially asked under what clause of Section 115 CPC the case can be covered. He submitted ^{that clause} sub-section (c) to Section 115 CPC will cover the case. That clause (C) to Section 115 of CPC provides that Court call for record of a case decide to see 'whether the court below has acted illegally or with material irregularity in exercise of its jurisdiction i.e., in breach of some provision of law or by breach of ^{by} committing error i.e., rules of procedure. It will be appropriate at this stage to refer to certain observations of Lordship of Privy Council, in the case of N.S. VENKATAGIRI AYYANGAR AND ANOTHER ~~vs~~- THE HINDU RELIGIONS ENDOWMENTS BOARD, MADRAS reported in

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AIR (36) 1949 Privy Council 156. At page 158 Privy Council has been pleased to consider the expression has acted illegally in exercise of its jurisdiction or acted, in exercise of jurisdiction, with material irregularity. Their Lordships observations read as under:

" That the section empowers the High Court to satisfy itself upon three matters. (a) that the order of the subordinate Court is within its jurisdiction (b) That the case is one in which the Court ought to exercise jurisdiction and (c) that in exercising jurisdiction the Court has not acted illegally, that is, in breach of some provision of law, or with material irregularity, that is, by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision. If the High Court is satisfied upon those three matters, it has no power to interfere because it differs, however profoundly from the conclusions of the subordinate court upon questions of fact or law."

H. 4/15 of the Court

Thus the jurisdiction of the court has very

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succinctly been explained by their Lordships in the case referred to above which has been followed in very many cases of their Lordships of the Supreme Court, with approval.

7. In the present case, the learned counsel contended that on the enforcement of Hindu Succession Act, 1956 sons and daughters could ^{and would} ~~not~~ ^{have} succeed simultaneously. Therefore, the revisionist being the members for daughter's Branch would be entitled village office. The applicants being the daughter's grand son would be entitled. Succession opens on the death of owner of the property and the law applicable is as it stood on that date whereunder is to be determined the question of succession. The claimants-revisionists who claim to have succeeded a property/^{in village} office the burden is and has been on them to have alleged and proved the death ^{of holder and} ~~of owner~~ of property and date of death of a person from whom they claim to have succeeded the property. In order to claim the benefit of any of the ^{provisions of} Hindu Succession Act 1956 burden did lay on the applicant to have alleged and proved Iachumoga was alive even

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even after the commencement of the Act ^{ic} and died on some specific date after the endorsement of Hindu Succession Act. On putting of this specific question to the learned Counsel, I found he was not able to give specific answer ^{on assertion} that Lachumoga died on some date after commencement of the Act. Hindu Succession Act did come into force with effect from 17th June 1956. When the claimant did not plead as well as could not prove that the father of the grand mother of the revisionists had died after the enforcement of Act No. 30/1956 i.e., after 17th June 1956 the daughters son or grand sons could not claim any right to property of Lachumoga including the Village Office in question. Under Hindu Law prior to Act No. 30/1956 son was the preferential heir for the daughter and if the son or sons ^{He was at} son's ~~is~~ not alive the daughter could succeed i.e., only in the absence of the son or son's son. The learned counsel for the parties submitted that the Hindu Law or say Personal Law of parties i.e., deceased governed the ⁱⁿ succession to Village office and Karnataka there is no other law applicable in the matter of Succession to such Office. Therefore, in my

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opinion, the authority did not commit any error either of law or error of jurisdiction. Particularly the appellate court did not err in law in dismissing the appeal. No provision has been shown to me by the Counsel except the reference made to the provisions of Hindu Succession Act that daughters would succeed simultaneously. But as mentioned earlier, this Act would be applicable only in cases where death of the person i.e., holder of the office^{hereditary office} from whom succession is claimed is established to have taken place after the enforcement of Act No. 30/1956. Thus considered in my opinion the authorities including the appellate court rightly held that revisionists were not authorised holder of hereditary village office and in rejecting their claim and appeal. The present revision as such is devoid of merits so is hereby dismissed. No order as to costs.

Sd/-
JUDGE

Csk/-